

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARC LILLY, NOT IN HIS INDIVIDUAL
CAPACITY BUT AS THE
REPRESENTATIVE FOR THE FORMER
SHAREHOLDERS OF VIEOSOFT, INC.,

Plaintiff,

v.

ENVOY, LLC; EMDEON, INC.; EMDEON
BUSINESS SERVICES, LLC,

Defendants and
Counterclaim Plaintiffs,

v.

DAVID GRANT; MARC LILLY,
INDIVIDUALLY AND AS THE
REPRESENTATIVE FOR THE FORMER
SHAREHOLDERS OF VIEOSOFT, INC.;
PETER HOOVER; AND JOHN EASTMAN,

Counterclaim Defendants.

No. 2:15-cv-00742 RSM

STIPULATED PROTECTIVE ORDER

1. **PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. **"CONFIDENTIAL" MATERIAL AND "ATTORNEY'S EYES ONLY" MATERIAL**

"CONFIDENTIAL" material shall include the following documents and tangible things produced or otherwise exchanged: contractual terms and documents the Court has ordered to remain under seal in this action; proprietary and commercially sensitive negotiations of terms of the Stock Purchase Agreement, including the annexes, schedules, and exhibits attached and referenced thereto; proprietary and commercially sensitive financial information, communications, and reports involving the Vieosoft business; proprietary and commercially sensitive details involving the Development Plan; proprietary and commercially sensitive details involving certain deliverables under the Stock Purchase Agreement and the Development Plan; proprietary and commercially sensitive communications or details regarding the market and competitors of the Vieosoft business; information prohibited from disclosure by statute; information that reveals trade secrets; research, technical, development, commercial, or financial information that the party has maintained as confidential; personal, health or medical information that is protected from disclosure

1 by operation of federal and state constitutional, statutory and regulatory law protecting the privacy
2 rights of individuals, including HIPAA; and privacy interests or personal identity information.

3 "ATTORNEY'S EYES ONLY" material shall include only the following documents and
4 tangible things: highly sensitive personal and confidential information relating to current and
5 former employees (who are not the Contributing Shareholders); pricing information bearing no
6 relation to the calculation of any contingent Eligible Revenue under the Stock Purchase Agreement;
7 information relating to research, development, testing of, and plans for, a party's existing and
8 proposed future products or services not relating to the Solution or any of the Milestone Objectives
9 under the Stock Purchase Agreement.

10 3. SCOPE

11 The protections conferred by this agreement cover not only confidential and attorney's eyes
12 only material (as defined above), but also (1) any information copied or extracted from such
13 material; (2) all copies, excerpts, summaries, or compilations of such material; and (3) any
14 testimony, conversations, or presentations by parties or their counsel that might reveal such
15 material. However, the protections conferred by this agreement do not cover information that is in
16 the public domain or becomes part of the public domain through trial or otherwise.

17 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
19 or produced by another party or by a non-party in connection with this case only for prosecuting,
20 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
21 categories of persons and under the conditions described in this agreement. Confidential material
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1 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
2 that access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
4 by the court or permitted in writing by the designating party, a receiving party may disclose any
5 CONFIDENTIAL material only to:

6 (a) the receiving party's counsel of record in this action, as well as employees of
7 counsel to whom it is reasonably necessary to disclose the information for this litigation;

8 (b) the officers, directors, and employees (including in house counsel) of the
9 receiving party to whom disclosure is reasonably necessary for this litigation;

10 (c) experts and consultants to whom disclosure is reasonably necessary for this
11 litigation and who have signed the "Acknowledgement and Agreement to Be Bound" (Exhibit A);

12 (d) the court, court personnel, and court reporters and their staff;

13 (e) copy or imaging services retained by counsel to assist in the duplication of
14 confidential material, provided that counsel for the party retaining the copy or imaging service
15 instructs the service not to disclose any confidential material to third parties and to immediately
16 return all originals and copies of any confidential material;

17 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
18 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
19 unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed
20 deposition testimony or exhibits to depositions that reveal confidential material must be separately
21 bound by the court reporter and may not be disclosed to anyone except as permitted under this
22 agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Disclosure of "ATTORNEY'S EYES ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any ATTORNEY'S EYES ONLY material only to:

(a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) in-house counsel of the receiving party to whom disclosure is reasonably necessary for this litigation;

(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgement and Agreement to Be Bound" (Exhibit A);

(d) the court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of attorney's eyes only material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any attorney's eyes only material to third parties and to immediately return all originals and copies of any attorney's eyes only material;

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(g) other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered.

4.4 Filing Confidential Material. Before filing confidential or attorney's eyes only material or discussing or referencing such material in court filings, the filing party shall confer with

the designating party to determine whether the designating party will remove the confidential or attorney's eyes only designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

5. **DESIGNATING PROTECTED MATERIAL**

5.1 **Exercise of Restraint and Care in Designating Material for Protection.** Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualified under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 **Manner and Timing of Designations.** Except as otherwise provided in this agreement (see, *e.g.*, section 5.2(b) below), or as otherwise stipulated or ordered, disclosure or

1 discovery material that qualifies for protection under this agreement must be clearly so designated
2 before or when the material is disclosed or produced.

3 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
4 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
5 the designating party must affix the word “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY”
6 to each page that contains such material. If only a portion or portions of the material on a page
7 qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*,
8 by making appropriate markings in the margins).

9 (b) Testimony given in deposition or in other pretrial or trial proceedings: the parties
10 must identify on the record, during the deposition, hearing, or other proceeding, all protected
11 testimony, without prejudice to their right to so designate other testimony after reviewing the
12 transcript. Any party or non-party may, within thirty days after receiving a deposition transcript,
13 designate portions of the transcript, or exhibits thereto, as confidential.

14 (c) Other tangible items: the producing party must affix in a prominent place on the
15 exterior of the container or containers in which the information or item is stored the word
16 “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY.” If only a portion or portions of the
17 information or item warrant protection, the producing party, to the extent practicable, shall identify
18 the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
20 designate qualified information or items does not, standing alone, waive the designating party’s
21 right to secure protection under this agreement for such material. Upon timely correction of a
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1 designation, the receiving party must make reasonable efforts to ensure that the material is treated
2 in accordance with the provisions of this agreement.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
7 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
11 regarding confidential designations without court involvement. Any motion regarding confidential
12 designations or for a protective order must include a certification, in the motion or in a declaration
13 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
14 affected parties in an effort to resolve the dispute without court action. The certification must list
15 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
16 to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
18 intervention, the designating party may file and serve a motion to retain confidentiality under Local
19 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion
20 in any such motion shall be on the designating party. Frivolous challenges, and those made for an
21 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties)

1 may expose the challenging party to sanctions. All parties shall continue to maintain the material
2 in question as confidential until the court rules on the challenge.

3 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
4 **LITIGATION**

5 If a party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
7 “ATTORNEY’S EYES ONLY,” that party must:

8 (a) promptly notify the designating party in writing and include a copy of the
9 subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to issue
11 in the other litigation that some or all of the material covered by the subpoena or order is subject to
12 this agreement. Such notification shall include a copy of this agreement; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
14 designating party whose confidential material may be affected.

15 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
17 or attorney’s eyes only material to any person or in any circumstance not authorized under this
18 agreement, the receiving party must immediately (a) notify in writing the designating party of the
19 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
20 protected material, (c) inform the person or persons to whom unauthorized disclosures were made
21 of all the terms of this agreement, and (d) request that such person or persons execute the
22 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.
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1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently produced
4 material is subject to a claim of privilege or other protection, the obligations of the receiving parties
5 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Information produced in
6 discovery that is protected as privileged or work product shall be immediately returned to the
7 producing party, and its production shall not constitute a waiver of such protection, if: (i) such
8 information appears on its face to have been inadvertently produced or (ii) the producing party
9 provides notice within 15 days of discovery by the producing party of the inadvertent production.

10 10. NON TERMINATION AND RETURN OF DOCUMENTS

11 Within 60 days after the termination of this action, including all appeals, each receiving
12 party must return all confidential material to the producing party, including all copies, extracts and
13 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

14 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
15 documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition
16 and trial exhibits, expert reports, attorney work product, and consultant and expert work product,
17 even if such materials contain confidential material.

18 The confidentiality obligations imposed by this agreement shall remain in effect until a
19 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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4 DATED: January 14, 2016 /s/ *John E. Casperson*
5 Attorneys for Plaintiff
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7 DATED: January 14, 2016 /s/ *Steven W. Fogg*
8 Attorneys for Defendant
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10 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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DATED: _____ HONORABLE RICARDO S. MARTINEZ
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read and understand the Stipulated Protective Order that was issued by the United States for the Western District of Washington on [date] in the case of *Marc Lilly, not in his capacity but as the representative for the former shareholders of Vieosoft, Inc. v. Envoy Inc., Emdeon Business Services LLC v. David Grant, Marc Lilly, individually and as a representative for the former shareholders of Vieosoft, Inc., Peter Hoover, and John Eastman*, 5-cv-00742 RSM. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could result in sanctions and punishment in the nature of contempt. I solemnly promise that I will not in any manner any information or item that is subject to this Stipulated Protective Order or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature: